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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,912	02/11/2004	Milo S. Medin	19675-08643	6075

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EXAMINER	
NEURAUTER, GEORGE C	
ART UNIT	**PAPER NUMBER**
2143	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/777,912	MEDIN, MILO S.	
	Examiner	Art Unit	
	George C. Neurauter, Jr.	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *05222006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-3 are currently presented and have been examined.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 May 2006 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 22 May 2006 was filed after the mailing date of the final rejection on 21 November 2005. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Amendment

The declaration filed on 22 May 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Donahue reference.

It appears that the Applicant is attempting to show prior invention by showing actual reduction to practice, however, the

Examiner is only assuming that this is the case since the Applicant has not provided a statement or even a general allegation to this effect.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Donahue reference.

In general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. See MPEP 715.07. The Applicant on page 6 of the declaration states: "Section 7.1 describes how content provider will 'create multimedia content that takes advantage of the high speed network, as well as extensive local news and information.' This latter text suggests that general content will be supplemented with local content (the 'local news and information') and multicast to a local area, as claimed." However, these statements in view of the disclosures of the exhibit do not show that the apparatus worked for this intended purpose, specifically wherein general content is customized to create versions of content to suit a particular area. Also, these statements in view of the disclosures of the exhibit does not appear to show that an existing method or apparatus existed for customizing versions of general content to suit particular

areas in any form. Therefore, since these specific showings fail to show that there exists general content and that this general content is customized to form another version of content, the declaration as filed fails to show sufficient proof of an actual reduction to practice of the claimed invention since the declaration fails to show that the apparatus actually existed and worked for its intended purpose.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6 101 180 to Donahue et al.

Regarding claim 1, Donahue discloses a method for delivery of high-performance online multimedia services comprising:

assigning general content to be multicast to a multicast destination address; (column 8, lines 7-25)

customizing the general content to suit a first area and thus forming a first version of the content; customizing the general content to suit a second area and thus forming a second version of the content; multicasting the first version to an end-user system in the first area; and multicasting the second version to an end-user system in the second area. (column 5, lines 27-45, specifically lines 30-32 and 37-40; column 5, lines 55-58)

2. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by "Hearst III, W., Netscape Developer Conference, Keynote Address, March 7, 1996" ("Netscape").

Regarding claim 1, "Netscape" discloses a method for delivery of high-performance online multimedia services comprising:

assigning general content to be multicast to a multicast destination address; customizing the general content to suit a first area and thus forming a first version of the content; customizing the general content to suit a second area and thus forming a second version of the content; multicasting the first version to an end-user system in the first area; and multicasting the second version to an end-user system in the

second area. (pages 3-4 of 12, specifically "So what @Home is building is a caching and replicating system...the thing to notice here is that there is a global Internet that we connect to through the network access points, the three primary network access point, but that @Home is going to build its own ATM-based backbone...At the next level down in the hierarchy there's a regional data center that contains high-availability servers, and our view is that content providers can push their content out into these regional centers so that you're not having to make requests to the root server - in essence, the data is distributed. Then at the next level down, below that, and you can think of this as a hierarchical system, you've got headends, which are the traditional origin of the video for a local franchised territory. We think that the right thing to do there is to have an intelligent caching system, where the pages that are cached there are really the pages that people are looking at. So we don't make guesses about what people want to see, we let the behavior of the people on the system decide that is locally cached...We've got to go out and create distribution on a head-end-by-head-end basis. That means getting speed and scalability is part of the challenge for the business, but it also means that every time we turn on a new piece of geography, there's a physical community that's getting turned on as well.

In the online service sense, we think of communities as people with a common interest, but there's another way to look at communities that's familiar to me from my newspaper experience and that is as people who live in the same area. You have school boards and you have planning commissions and you have local government institutions and you have libraries and you have kids who want to get their homework from the same school, so there's a real opportunity to look at local content as something that can be created."; page 5 of 12, specifically "I'm sure many of you have had a chance to witness what the Mbone technology is all about...But we shouldn't lose track of you might think of as narrow-band multicasting, which is the process of being able to clone information and broadcast it out of the network in a very noninvasive way...So @Home is going to create a backhauling process where all the customer interaction data that's collected at the head-end and the regions is concatenated into "what your customer is doing at your Website."; page 6 of 12 , specifically "We will develop local content or help those that do...I think @Home should concentrate on acceleration the number of places where we're available..."; page 11, specifically "The backbone piece is under the direct management and control of @Home. And then the last mile there's a retail partner who is a cable television operator.")

Regarding claim 2, "Netscape" discloses the method of claim 1, wherein the first area corresponds to a region served by a first regional data center, and the second area corresponds to a region served by a second regional data center (pages 3-4 of 12, specifically "So what @Home is building is a caching and replicating system...the thing to notice here is that there is a global Internet that we connect to through the network access points, the three primary network access point, but that @Home is going to build its own ATM-based backbone...At the next level down in the hierarchy there's a regional data center that contains high-availability servers, and our view is that content providers can push their content out into these regional centers so that you're not having to make requests to the root server - in essence, the data is distributed.)

Regarding claim 3, "Netscape" discloses the method of claim 2, wherein the first area corresponds to a locality served by a first modified head-end, and the second area corresponds to a locality served by a second modified head-end (pages 3-4 of 12, specifically "So what @Home is building is a caching and replicating system...the thing to notice here is that there is a global Internet that we connect to through the network access points, the three primary network access point, but that @Home is going to build its own ATM-based backbone...Then at the next

level down, below that, and you can think of this as a hierarchical system, you've got headends, which are the traditional origin of the video for a local franchised territory... So we don't make guesses about what people want to see, we let the behavior of the people on the system decide that is locally cached...We've got to go out and create distribution on a head-end-by-head-end basis.")

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by anticipated by US Patent 5 892 535 to Allen.

Regarding claim 1, Allen discloses a method for delivery of high-performance online multimedia services comprising:

assigning general content to be multicast to a multicast destination address; customizing the general content to suit a first area and thus forming a first version of the content; customizing the general content to suit a second area and thus forming a second version of the content; multicasting the first version to an end-user system in the first area; and multicasting the second version to an end-user system in the second area. (column 2, lines 8-12; column 8, line 62-column 9, line 22; column 18, lines 23-67, specifically 49-56 and 65-67)

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5 446 490 to Blahut et al.

Regarding claim 1, Blahut discloses a method for delivery of high-performance online multimedia services comprising:

assigning general content to be multicast to a multicast destination address; customizing the general content to suit a first area and thus forming a first version of the content; customizing the general content to suit a second area and thus forming a second version of the content; multicasting the first version to an end-user system in the first area; and multicasting the second version to an end-user system in the second area (column 5, lines 15-45; column 5, line 67-column 6, line 18; column 6, lines 30-46)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donahue in view of "Cable Modem Termination System - Network Side Interface Specification ("CTMS-NSIS").

Regarding claim 2, Donahue discloses the method of claim 1.

Donahue does not expressly disclose wherein the first area corresponds to a region served by a first regional data center, and the second area corresponds to a region served by a second regional data center, however, "CTMS-NSIS" discloses these limitations (page 3, "Cable Modem Termination System", specifically "distribution hub")

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since "CTMS-NSIS" discloses that the regional data centers allow data to sent over coaxial networks (page 1, "1. Scope and Purpose", first paragraph) and implements multicasting of data to specific end users (page 6, "IP multicast addressing and forwarding"). In view of these specific advantages and that the references are directed to multicasting of data to end users, one of ordinary skill would have been

motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor.

Regarding claim 3, Donahue discloses the method of claim 2.

Donahue does not disclose wherein the first area corresponds to a locality served by a first modified head-end, and the second area corresponds to a locality served by a second modified head-end, however, "CTMS-NSIS" discloses these limitations (page 3, "Hybrid Fiber/Coax (HFC) System", specifically "fiber node")

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since "CTMS-NSIS" discloses that the modified head ends allow data to sent over coaxial networks (page 1, "1. Scope and Purpose", first paragraph) and implements multicasting of data to specific end users (page 6, "IP multicast addressing and forwarding"). In view of these specific advantages and that the references are directed to multicasting of data to end users, one of ordinary skill would have been motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor.

Conclusion

It is noted that the column, line, and/or page number citations used in the prior art references as applied by the Examiner to the claimed invention are for the convenience of the Applicant to represent the relevant teachings of the prior art. The prior art references may contain further teachings and/or suggestions that may further distinguish the citations applied to the claims, therefore, the Applicant should consider the entirety of these prior art references during the process of responding to this Office Action. It is further noted that any alternative and nonpreferred embodiments as taught and/or suggested within the prior art references may also constitute prior art and the prior art references may be relied upon for all the teachings would have reasonably suggested to one of ordinary skill in the art. See MPEP 2123.

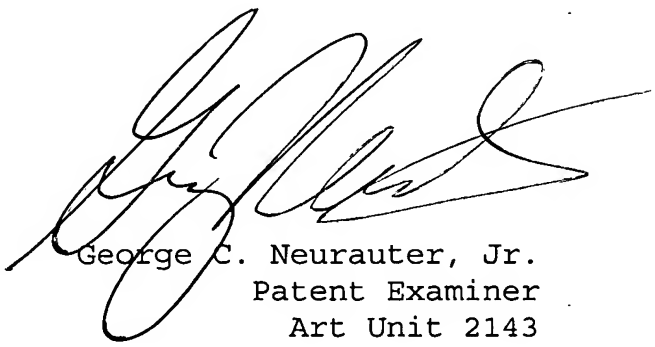
The prior art listed in the PTO-892 form included with this Office Action disclose methods, systems, and apparatus similar to those claimed and recited in the specification. The Examiner has cited these references to evidence the level and/or knowledge of one of ordinary skill in the art at the time the invention was made, to provide support for universal facts and the technical reasoning for the rejections made in this Office Action including the Examiner's broadest reasonable interpretation of the claims in accordance with MPEP 2111 and to

evidence the plain meaning of any terms not defined in the specification that are interpreted by the Examiner in accordance with MPEP 2111.01. The Applicant should consider these cited references when preparing a response to this Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



George C. Neurauter, Jr.
Patent Examiner
Art Unit 2143